

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 430X)¹

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN OKLAHOMA
COUNTY, OK

Decided: November 10, 2005

BNSF Railway Company (BNSF) and Stillwater Central Railroad, Inc. (SLWC) jointly filed a notice of exemption under 49 CFR 1152 Subpart F Exempt Abandonments and Discontinuances of Service, for BNSF to abandon, and for SLWC to discontinue service over, approximately 2.95 miles of railroad between milepost 539.96 and milepost 542.91 in Oklahoma City, Oklahoma County, OK. Notice of the exemption was served and published in the Federal Register on October 13, 2005 (70 FR 59802). The exemption is scheduled to become effective on November 12, 2005.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding on October 18, 2005. In the EA, SEA indicates that, according to BNSF, the proposed abandonment may include removal of all rails, ties, bridges and structures on the line, and that the Oklahoma Department of Transportation has requested that BNSF abandon the eastern half of the line to accommodate the relocation of Interstate Highway 40 through downtown Oklahoma City. Further, according to SEA, BNSF states that abandonment of the western portion of the line would lead to the elimination of a diamond crossing and several street crossings. BNSF also states that, during salvage operations, if any salvage activities may be required, precautions would be taken to ensure public safety, and contractors would be required to satisfy all applicable health and safety laws and regulations. Accordingly, SEA recommends that a condition be imposed requiring BNSF to conduct salvage operations in the manner it has proposed.

SEA states that the Natural Resources Conservation Service (NRCS) submitted comments stating that no prime farmland or wetlands on agricultural land would be affected by the proposed abandonment. However, NRCS recommends that proper erosion and sediment control structures be implemented and maintained during salvage activities. Therefore, SEA recommends that a condition be imposed requiring BNSF to consult with NRCS prior to beginning salvage activities regarding NRCS's recommendations.

¹ The notice served and published on October 13, 2005, embraced STB Docket No. AB-1040X, Stillwater Central Railroad, Inc.—Discontinuance of Service Exemption—in Oklahoma County, OK.

SEA indicates that the Oklahoma Tourism and Recreation Department (OTRD) submitted comments requesting that BNSF avoid adversely affecting the Wheeler Park Softball Stadium, which is located near the right-of-way of the proposed abandonment. Accordingly, SEA recommends that a condition be imposed requiring BNSF to consult with OTRD to address OTRD's concerns prior to beginning salvage activities.

Also according to SEA, the U.S. Environmental Protection Agency (EPA) submitted comments stating that, based on the information provided by BNSF, it believes that a stormwater permit would not be required for the proposed abandonment. However, EPA states that the Oklahoma Department of Environmental Quality (ODEQ) has received authorization from EPA to implement the National Pollutant Discharge Elimination System program. Thus, EPA recommends that BNSF consult with ODEQ to determine stormwater permitting requirements. Also, SEA states that ODEQ submitted comments stating that, if the proposed abandonment would disturb more than one acre of land, a Storm Water Discharge General Permit would be required. Accordingly, SEA recommends that a condition be imposed requiring BNSF to consult with ODEQ prior to beginning salvage activities and to comply with the reasonable requirements of ODEQ.

Finally, SEA states that the U.S. Army Corps of Engineers (Corps) submitted comments indicating that, based on the information provided by BNSF, it appears that a Corps permit would not be required. However, if salvage activities would require discharge into the North Canadian River or its tributaries, the Corps requests the opportunity to reexamine the project to determine whether a Corps permit would be required. Accordingly, SEA recommends that a condition be imposed requiring BNSF to submit final salvage plans to the Corps and comply with the reasonable requirements of the Corps.

Comments to the EA were due by November 4, 2005.² SEA received a number of comments concerning the potential safety impacts associated with the diversion of traffic to a line that contains at-grade, as opposed to grade-separated, crossings of certain roadways. However, SEA notes that the Oklahoma Corporation Commission and the Federal Railroad Administration have specific safety regulations in place for at-grade crossings that would mitigate the potential safety impacts of such diversion of traffic. Accordingly, SEA does not recommend that the Board impose any conditions in this area and none will be imposed.

SEA further notes that the Oklahoma Historical Society (SHPO) has stated that the Robinson and Walker Street Underpasses have been determined eligible for listing in the National Register of Historic Places. However, because the adverse effects to these structures have been mitigated through a Memorandum of Agreement developed between the SHPO and the Federal Highway Administration, SEA indicates that no further evaluation of these underpasses is necessary.

² Comments to the EA were originally due on November 2, 2005. However, by request on behalf of the North American Transportation Institute, the comment due date was extended to November 4, 2005.

Accordingly, the conditions recommended by SEA in the EA will be imposed.

Finally, the Board has received a number of protests asking for rejection of the notice of exemption, asserting that traffic is currently moving over the line. By reply filed on November 9, 2005, BNSF disputes claims that the line is not eligible for the exemptions sought through the notice by BNSF and SLWC. These protests will be addressed in a subsequent Board decision. The abandonment may not be consummated until the environmental conditions are satisfied. It is anticipated that the Board will address the protests before the abandonment is consummated.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption for abandonment of the line described above is subject to the conditions that BNSF shall: (1) take precautions during salvage operations to ensure public safety and ensure that salvage contractors satisfy all applicable health and safety laws and regulations; (2) consult with NRCS prior to beginning salvage activities regarding NRCS's recommendations for the use of erosion and sediment control structures; (3) consult with OTRD prior to beginning salvage activities to address OTRD's concerns regarding the Wheeler Park Softball Stadium; (4) consult with ODEQ prior to beginning salvage activities and comply with the reasonable requirements of ODEQ; and (5) submit final salvage plans to the Corps and comply with the reasonable requirements of the Corps.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary